TELLS THE FACTS AND NAMES THE NAMES

# CounterPunch

NOV. 1-15, 2007 ALEXANDER COCKBURN AND JEFFREY ST. CLAIR VOL. 14, NO. 19

# ISRAEL'S IRON HEEL

## The Defense of Palestinian Prisoners

### By Nancy Glass & Reem Salahi

Lawyers who represent Palestinians in Israeli military and civil courts face obstacles that systematically erode the right of Palestinian detainees to legal representation. Defense attorneys must contend with military orders, Israeli laws and prison procedures that curtail their ability to provide adequate counsel to their clients. Here we describe how, from the moment of detention through the process of appeal, lawyers are prevented from giving adequate counsel to Palestinian defendants. To summarize:

• More than 650,000 Palestinians have been detained by Israel since 1967. There are currently 9,493 Palestinians held in Israeli prisons. At least 765 of the prisoners are administrative detainees who are held on secret evidence, do not have a right to a trial, and can be held for six-month periods that can be renewed indefinitely. Palestinians detained by the Israeli military can be barred access to a lawyer for 90 days and held without being charged for 188 days.

• In violation of international law, Palestinian prisoners are transported to Israel from the West Bank. Lawyers from the West Bank and Gaza cannot visit their clients in Israeli prisons and interrogation centers because they cannot enter Israel without permission from the Israeli military. In violation of Israeli prison ordinances, prisons are open to lawyer visits only a few days each week. During prison visits, lawyers must interview their clients through a glass or plastic divider, often within earshot of a prison guard. If lawyers wish their clients to sign confidential documents, they must

GLASS & SALAHI CONTINUED ON PAGE 5

## Food Security and Mental Health in the Occupied Palestinian Territories

### By Feroze Sidhwa

The Israel Defense Forces invaded and occupied the West Bank, Gaza Strip and East Jerusalem (the Occupied Territories) in June 1967. Since then Israel has maintained a military occupation in those territories with several unique characteristics. According to Harvard's Sara Roy, the relationship between Israel and the Occupied Territories "is characterized by an economic process specific to Israeli rule, a process that could be characterized as de-development." The occupation has "proven more exploitative than … other settler regimes, because [it] rob[s] the native population of its most important economic resources – land, water, and labor – as well as the internal capacity and potential for developing those resources." Indeed, "the government of Israel has structurally and institutionally dismantled the Palestinian economy as well as undermined the fabric of Palestinian society and the expression of cultural and political identity. The economy is but one (critical) reflection of this phenomenon." (*The Gaza Strip: The Political Economy of De-Development,* Washington, D.C., 2001.)

Two additional critical reflections of this phenomenon are the recent sharp rise in food insecurity and a long-term threat to Palestinians' mental health and children's development. (NB: Herein, "Palestinian", "Palestinians", etc., refer to the Palestinians living in the Occupied Territories, not to those living in Israel or in the Palestinian diasporas.)

The World Food Programme (WFP) reported in January 2007 that 34 per cent of Palestinian households are food secure, 20 per cent are marginally secure, 12 per cent are vulnerable to food insecurity, and 34 per cent are food insecure. The U.N. Refugee World Administration (UNWRA) reports that as of November 2006, 40.2 per cent of Palestinian households lived in "deep poverty" (daily per capita consumption of less than $2.10); in Gaza the figure is 79.8 per cent. The first half of 2006 saw a 38.3 per cent increase in the number of Palestinian households in deep poverty.

While in 2003 food security "remain[ed] poor and food insecurity [was] a real or constant threat for seven out of 10 Palestinians," since "2006, the political and economic situation in the WBGS [West Bank and Gaza Strip] has deteriorated even further." In 2004, the World Bank "estimate[d] that per capita food consumption declined some 25 per cent in real terms compared to 1999." The decline in food consumption continued, with a further decline of 8 per cent in the first half of 2006 alone.

The consequences have been severe and will likely have long-term effects on Palestinian children's development. In 2004, wasting reached 1.9 per cent; stunting 9.9 per cent; and vitamin A deficiency in children 12-59 months old reached 22 per cent; 50.5 per cent of West Bank children under 24 months and 71.9 per cent of Gazan children 9-12 months old are anemic. UNICEF reports that "one in ten children is stunted, one in two is anemic, and 75 per cent of children under the age of five suffer from vitamin A deficiency; … low birthweight rates are as high as 8.2 per cent…"

SIDHWA CONTINUED ON PAGE 2

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

The observed vitamin A deficiency and anemia "are considered by WHO international standards as a severe public health situation…" Furthermore, "albeit slowly, chronic malnutrition is on a steadily rising trend; and micro-nutrient deficiencies are of concern…" The observed rise in malnutrition status is due to decreased food consumption and decreased quality of consumed food over at least the past eight years.

Palestinian food insecurity is highly correlated with the long-term intensity of Israel's closure regime, the extent of land confiscation, the attendant destruction of assets and infrastructure, and loss of income. Closure and physical destruction of Palestinian economic infrastructure are both core policies of the occupation and lead directly to de-development.

The World Bank reports that as of December 2002, Palestinian gross national income (GNI) losses "reached some U.S.$5.2 billion in 27 months – when one considers that GNI was estimated at U.S.$5.4 billion in 1999, the opportunity cost of the crisis represents almost one entire year of Palestinian wealth creation. Cumulated raw physical damage [from September 2000 to December 2002] has jumped in the last year to some U.S.$930 million, and lost investment to U.S.$3.2 billion." The U.N. Conference on Trade and Development (UNCTAD) reports that the "post-Oslo investment surge … was followed by extraordinary Israeli restrictive measures and destruction and losses of up to one-third of the existing physical capital and productive capacity" of the Occupied Territories. Real per capita GDP declined 10 per cent further in the first half of 2006 alone.

The WFP lists nine major risk factors predisposing Palestinian households to food insecurity; all but the ninth are due to Israeli occupation policies. They note further that "increased mobility restrictions, continued building of the Barrier, and the … boycott of the PA have all put increased negative pressure on the factors that influence food security…." A joint European Union and U.N. Food and Agriculture Organization report lists eight reasons for the increasing cost of food; all but the eighth are due to Israeli occupation policies.

The U.N. Office for the Coordination of Humanitarian Affairs (OCHA) reports closure and fragmentation by Israeli settlements "is at the root of the West Bank's declining economy…. Unless the problems caused by the existence and expansion of the settlements are addressed, the dismal humanitarian outlook for Palestinians will intensify." Several World Bank reports affirm this judgment.

Roy describes the core policies of de-development as "measures designed… [to] fragment Palestinian society… to render it unviable… include: …the introduction of advanced agricultural technologies concomitant with the steady confiscation of land and water; the introduction of refugee rehousing programs together with the establishment of Jewish settlements on Arab land; improved access to employment in the Israeli economy in conjunction with prohibitions on the development of the domestic Palestinian economy (e.g., restricted access to international markets, control over all forms of indigenous production and over the flow of information, and consistently low levels of government investment in key economic sectors)…" Following the Palestinian legislative elections of January 2006, Israeli prime ministerial advisor Dov Weisglass bluntly summarized Israeli policy toward the Palestinians: "It's like an appointment with a dietician. The Palestinians will get a lot thinner, but won't die." (*Haaretz*, Feb. 19, 2006.)

## Mental Health

Garbarino and Kostelny note that while "single incidents or brief periods of intense stress tend to have limited effects on children, repeated and chronic stresses may lead to anger, despair and severe psychic numbing, which in turn result in major personality changes. Such chronic trauma, or 'continuous traumatic stress syndrome,' and its resulting psychological consequences are a major concern … going beyond PTSD [post-traumatic stress disorder] to a broader range of developmental and behavioral issues."

The level of conflict and violence in the Occupied Territories since the occupation began in 1967 has been and remains extraordinarily high. In 1979, "85 per cent of Palestinian children reported having witnessed a violent event related to occupation and resistance, and 39 per cent had lost a family member to ongoing conflict with the Israelis." In the first two years of the first Intifada, Israeli forces injured "between 50,000 and 63,000 Palestinian children and youth… in shootings, beatings, and tear-gassing,… about 7 per cent of the total child/youth population." (*Child Development*, 1996, Issue 67.) Note that the first Intifada continued for another four years. Save the Children reports, "Some two-thirds of children living in the West Bank and Gaza do not have safe areas for entertainment, socializing and playing sports."

In the first two years of the second Intifada, the IDF inflicted $930 million in "raw physical damage" on the Occupied Territories; UNCTAD estimates that up to one-third of Palestinian infrastructure has been physically destroyed by Israeli military force since September 2000. According to B'tselem and Human Rights Watch, Israeli forces demolished at least 8,772 Palestinian homes from 1987 to 2006. Amnesty International reports IDF bulldozers uprooted and destroyed "hundreds of thousands of olive, citrus, almond, date and other trees" between September 2000 and May 2004 alone; these orchards "constituted a source, and in many cases the only source, of livelihood for hundreds of thousands of people."

The Palestinian Central Bureau of Statistics reports 31,426 occupation-related injuries since September 2000. According to UNICEF, "Nearly half of all students have seen their schools be-

**CounterPunch**
EDITORS
ALEXANDER COCKBURN
JEFFREY ST. CLAIR
ASSISTANT EDITOR
ALEVTINA REA
BUSINESS
BECKY GRANT
DEVA WHEELER
DESIGN
TIFFANY WARDLE
COUNSELOR
BEN SONNENBERG
CounterPunch
PO Box 228
Petrolia, CA 95558
1-800-840-3683
counterpunch@counterpunch.org
www.counterpunch.org
All rights reserved.



LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

sieged by [Israeli] troops, and more than 10 per cent have witnessed the killing of a teacher...." OCHA reports 109 weekly search raids and 101 weekly arrests on average by Israeli forces between August 2006 and July 2007. The Israeli media report that "in the first few days of the [second] Intifada, the IDF fired about 700,000 bullets and other projectiles in Judea and Samaria [the West Bank] and about 300,000 in Gaza." (*Maariv*, Sept. 6, 2002.) The total population of the West Bank and Gaza is under four million.

While it is difficult to quantify levels of violence, occupation-related violence is clearly part of most Palestinians' daily lives. As importantly, this has been the case for decades; thus, if occupation-related violence affects Palestinians' mental health, those effects may now be multigenerational in scope. The extreme level of violence and its extended duration are both extensions of a de-development policy designed to "undermine the fabric of Palestinian society and the expression of cultural and political identity."

That political violence adversely affects the mental health of victims is well established. Occupation-related violence affects Palestinians' mental health, especially that of children. Baker reported in 1990 that 46.7 per cent of Palestinian children are "terrified of Israeli soldiers" (who are omnipresent throughout the West Bank); 27.8 per cent "fear leaving the house"; only 55 per cent "are seen as obeying their parents on a regular basis"; 45.1 per cent regularly fight with other children; 29.5 per cent regularly disturb others; 11.3 per cent exhibit signs of depression; 30.2 per cent have difficulty falling asleep; 33.4 per cent awake more than once per night; 32.9 per cent have regular nightmares. Most of these markers are considerably worse than for Palestinian children not exposed to occupation-related violence. (*American Journal of Orthopsychiatry*, 1990; 60(4).)

In 2002, Thabet et al reported the prevalence of PTSD among children in the Occupied Territories "was similar to [that] reported in war-affected children in Iraqi Kurdistan,... displaced Iranian children ... and displaced children in Croatia...." In 2003, Qouta et al reported that 54 per cent of children whose homes were destroyed by Israeli bombardment several months prior to evaluation suffered from severe PTSD, and a further one-third suffered from moderate PTSD. The prevalence of PTSD "corresponds with the levels of PTSD among Cambodian ... refugee children fleeing atrocities" in the mid-1980s. (*European Child & Adolescent Psychiatry*, 2003; 12(6).)

The World Bank reported in October 2004 that "the protracted conflict is taking a heavy toll on the mental health of children and youth. Continued violence has increased levels of psychological trauma and stress among children and young people. Almost one-half (48 per cent) of children report having personally experienced conflict-related violence or witnessed violence affecting an immediate family member. Around 40 per cent of parents report intifada-related psychological problems among children

**"Nearly half of all students have seen their schools besieged by [Israeli] troops, and more than 10 per cent have witnessed the killing of a teacher...."**

(aggressive behavior, nightmares, etc.)... Schoolteachers and parents also report diminished attention spans and difficulty in concentrating among school-age children." UNICEF reports children "in nearly a third of all families experience anxiety, phobia or depression."

Beyond children, occupation-related violence affects the older youth and adult populations as well. Baker reports "50 per cent of males who were injured in the [first] Intifada met full criteria for PTSD diagnosis." (*Clinical Psychology Review,* 19(8).)

Torture as a form of political violence has especially severe consequences for mental health. Studies report half of torture victims have been found to develop PTSD. A study of Palestinian prisoners by El Sarraj et al reported 40 per cent of torture victims reported seven or more PTSD symptoms; only 5 per cent reported zero PTSD symptoms. "Severity of reported torture experiences strongly predicted subsequent PTSD symptoms, manifesting itself in the form of intrusive reexperiencing, withdrawal and numbness, and hyperarousal." (*Journal of Traumatic Stress,* 9(3).)

"From 1967," Amnesty International reports, "the Israeli security services have routinely tortured Palestinian political suspects in the Occupied Territories." Incidences of ill-treatment and torture waxed and waned until the outbreak of the first Intifada in 1987, after which human rights organizations registered a sharp increase in Israeli use of torture against detained Palestinians.

In 1994, Human Rights Watch reported that nearly all Palestinians undergoing interrogation" are "tortured or severely ill-treated". Thus, "the number of Palestinians tortured or severely ill-treated while under interrogation during the [first] Intifada is in the tens of thousands – a number that becomes especially significant when it is remembered that the universe of adult and adolescent male Palestinians in the West Bank and Gaza Strip is under three-quarters of one million." Mark Tessler reports that "arrests and imprisonments associated with the [first] Intifada totaled about 50,000" by December 1989; the Intifada continued until 1993. (*A History of the Israeli-Palestinian Conflict*, Bloomington: 1994.)

Incidence of torture decreased after 1993 such that "in September 2001" the Public Committee Against Torture in Israel (PCATI) "estimated that [each month] the total number of detainees being subjected to torture and other ill-treatment reached 'only' dozens." However, after the outbreak of the second Intifada in late September 2001, PCATI estimated that "each month, hundreds of Palestinians have been subjected to one degree or another of torture or other cruel, inhuman or degrading treatment..."; indeed, the number of Palestinian detainees "against whom no method of ill-treatment whatsoever was used is negligible." PCATI estimates "over 28,000 Palestinians were arrested between" September 2000 and April 2003 alone. The Palestinian human rights organization al-Addameer estimates at least 650,000 Palestinians (mostly male) have been imprisoned by Israeli forces at least once in their lives.

According to Baker, in 1990 "more than three-fourths (77 per cent) of ... released [Palestinian] prisoners reported intrusive memories, and nearly one-half (47 per cent) were plagued with repeated nightmares associated with ... torture." These findings were largely confirmed by El Sarraj et al in 1996. The trends described have most likely continued or accelerated



LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

with continued torture and ill-treatment of Palestinians in Israeli prisons since the outbreak of the second Intifada.

The long-term psychological effects of torture go beyond PTSD. In a study of Latin American torture victims who left their countries and successfully resettled in the United States (likely the best-case scenario for psychological and physical recovery), "the physical symptoms of torture tended to decrease or become less troublesome over time, [but] the psychological symptoms persisted and caused great distress in most of the study participants years after the episode of torture.... Most participants reported suffering from anxiety. Many had recurrent nightmares about their torture or were reminded of it by ordinary stimuli. Many experienced a diminished responsiveness to the external world." Sixty-two per cent had difficulty sleeping; 59 per cent reported a decreased ability to concentrate and remember; 43 per cent had difficulty relaxing and were easily fatigued; 41 per cent reported intrusive recollections of torture and phobias; and 38 per cent reported constant anxiety and an inability to trust others. A similar study of torture victims resettled in Canada reported worse outcomes, perhaps because the sample had experienced generally higher levels of abuse. (Allodi, et al, in *The Breaking of Bodies and Minds*, New York: 1985.)

According to human rights and media reports, the methods of physical and psychological torture and ill-treatment used against victims in the two resettlement studies and used by Israeli forces against Palestinians are nearly identical. Given that torture and ill-treatment of Palestinians has been "routine" for the past forty years, and given the very large (if uncertain) percentage of the male Palestinian population tortured or ill-treated, it is likely that the psychological symptoms of torture go beyond individual mental health concerns and have reached the level of a public health crisis.

## Conclusions and prospects

The occupation of the West Bank, Gaza Strip and East Jerusalem threatens the mental health of all Palestinians, but most especially the generation of Palestinian children who continue to be exposed to the "repeated and chronic stresses" of occupation-related violence. So long as occupation-related violence continues at its current scale or, as appears increasingly likely, if it returns to the far worse levels of 2000-2003, the outlook for mental health recovery will remain poor.

The dramatic decrease in food security in the Occupied Territories is the result of ongoing Israeli occupation policies designed to "structurally and institutionally dismantle the Palestinian economy...." Palestinian food insecurity is directly attributable to the settlements' fragmentation of the Occupied Territories into separate geographic and economic spaces, "the root of the West Bank's declining economy."

**Given the very large (if uncertain) percentage of the male Palestinian population tortured or ill-treated, it is likely that the psychological symptoms of torture go beyond individual mental health concerns and have reached the level of a public health crisis.**

Short of an end to the occupation, food security issues can perhaps be addressed with food aid from the international community, but this will require Israeli guarantees of cooperation on movement of food aid, especially into and out of Gaza, as well as sustained international financial and political support for such aid. Israel's recent designation of Gaza as a "hostile entity" and U.S. Secretary of State Rice's agreement with the declaration do not indicate that either international support or Israeli assistance will be forthcoming. Israel's subsequent declaration of intent to cut fuel and electricity supplies to Gaza could portend a humanitarian disaster in the true sense of the term, creating a pocket of sub-Saharan Africa-level poverty and starvation in the Middle East.

Save the Children, an NGO, has instituted a "Classroom-Based Intervention" (CBI) to address occupation-related psychological problems among Palestinian children. The conclusions of the pilot CBI study were limited but positive: "CBI played an important role in maintaining coping strengths and resiliency among these children. It is crucial to note that these important gains occurred in the most extreme of environments for children: i.e., while the conflict situation is continuing." However, given the extremely high prevalence of PTSD symptoms and likely mental health and developmental problems in Occupied Territories, and given the ongoing exposure of Palestinians to the events precipitating those problems, such an intervention-based program would need to be truly massive and long term and would require enormous financial support from the international community and the full support of the Israeli government. Given long-term American support for Israel's occupation of the Occupied Territories and de-development of Palestinian society, the prospects for such support are dim. It is, thus, unlikely that CBI or similar programs will have a decisive impact on the prevalence of mental health problems and the overall risk to normal development of Palestinian children absent an end to the occupation itself.

Dr. Derek Summerfield notes that a "venerable body of literature has shown that uprooted peoples do well or not as a function of their capacity to rebuild social networks and a sense of community." (*Lancet*, 1997; 349.) If so, then sustainable, self-sufficient food security and improved mental health outcomes in the Occupied Territories can only grow out of Palestinian economic and political stability and recovery, both of which are likely impossible under continued Israeli occupation and de-development. CP

**Feroze Sidhwa** received his B.A. in Public Health Studies from Johns Hopkins University in 2004, and is currently a second year medical student at the University of Texas Health Science Center in San Antonio. He lived and worked in Israel from October 2004 to May 2005; volunteered at various hospitals in Bulawayo, Zimbabwe, for three weeks in December 2006; and volunteered in Hebron, West Bank, at al-Ahli Hospital and with the Palestinian Medical Relief Society for six weeks this summer. For a complete list of references for this article, please contact him at sidhwa@uthscsa.edu.



LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

# *"As a lawyer, you are a cow. They treat us like they are trying to milk us. They squeeze everything from us: our dignity, our time — everything."* Jamil Firhan

give these papers to prison guards.

• Lawyers from the West Bank and Gaza can neither represent clients in Israeli civil courts nor appeal military court decisions to the Israeli High Court. Lawyers with Israeli citizenship who are licensed by the Israeli Bar Association cannot open offices in the West Bank or travel legally to most cities in the West Bank.

Because it is so difficult for lawyers to visit prisons, the majority of client interviews are conducted at the military courts in the minutes before a prisoner's hearing begins.

• Lawyers must arrive at the military courts at 9:30 a.m. and may wait for hours for their sessions to begin, as military court proceedings are unscheduled. All court proceedings are conducted in Hebrew; all court documents and military orders are provided in Hebrew without translation. Most military court prosecutors have no experience in a civil court system.

The military is not required to publish the decisions of military judges. In administrative detention hearings, military judges are not required to justify their decisions beyond stating that their approval of a detention order was based on "secret evidence".

• Under current military orders in the West Bank, the following activities are defined as threats to the security of Israel: putting up political posters, writing political slogans, participating in demonstrations, and belonging to any political party.

* * *

Palestinians from the Occupied Territories have no formal citizenship. West Bank and Gaza residency cards give Palestinians the right to reside in particular cities or towns in the West Bank or Gaza. Palestinians with Jerusalem IDs have residency cards that grant them the right to live in Jerusalem. Palestinians with Israeli citizenship live within the borders of Israel.

Three types of courts may have jurisdiction over Palestinians:

1. Palestinian civil courts: Palestinians with West Bank or Gaza residency who are accused of violating Palestinian law are tried in the courts of the Palestinian Authority. The experiences of lawyers in these courts are not covered by this report.

2. Military courts: Since 1967, Palestinians with West Bank and Gaza residency who are accused of threatening the security of Israel are tried in courts set up by the Israeli military. Under the military orders in effect in the West Bank, activities such as attending a demonstration or putting up a political poster are defined as threatening the security of Israel. The two military courts, Ofer and Salem, are located on Israeli military bases.

3. Israeli civil courts: These have jurisdiction over Palestinians who are Israeli citizens. The jurisdiction of the Israeli civil courts also extends to Palestinians with West Bank residency who are accused of any criminal offense, including conducting activities within Israel that constitute a security threat. The Israeli parliament has passed a set of laws that diminish due process protection under Israeli civil law afforded to defendants accused of being security threats.

Lawyers who defend Palestinians must contend with inequalities arising from two systems of law in Israel and the Occupied Territories. Israeli civil law offers greater procedural protection for defendants, but Palestinians with West Bank residency generally do not fall under the jurisdiction of this law. The inequity of this system is most striking when two people who are involved in the same activity are tried under different court systems.

Israeli citizenship does not guarantee that a defendant will be within the jurisdiction of the Israeli civil courts. Israeli courts have ruled that both Palestinians with Jerusalem IDs and Palestinians with Israeli citizenship can be tried in military courts.

## Administrative detention

Administrative detention is a procedure that allows the military to hold prisoners indefinitely on secret evidence without charging them or allowing them to stand trial. Both Palestinians with West Bank residency and Israeli citizens can be held as administrative detainees. According to military orders in the West Bank and Israeli law, the military commander of the West Bank can order that a prisoner be held for six months without being charged. The six-month detentions can be renewed indefinitely, so long as the military court holds periodic hearings to extend the detention order. The judge, prosecution and Israeli Security Agency (ISA) have access to the charges and evidence. The military prosecutor has discretion to withhold this information from the detainee and his lawyer.

It is possible for administrative detention to be combined with regular proceedings in the military courts. For example, a prisoner may be placed in administrative detention for several months, then charged by the military tribunal. The prisoner will then stand trial while the detention order against him remains in effect. Alternately, a prisoner could be tried and convicted by a military tribunal, complete his sentence, and then be placed under administrative detention.

As demoralizing as it is for lawyers to defend Palestinians in the military courts, lawyers who defend administrative detainees face the even greater challenges of secret evidence, vague charges and indeterminate detentions. The frustration of this work takes its toll on lawyers, and many reported that they have simply stopped accepting administrative detainee cases.

## Types of Lawyers

A lawyer's citizenship or residency status dictates his ability to represent Palestinian clients.

Palestinians with West Bank residency are limited to working in the military courts because they cannot represent clients in Israeli civil courts or in the Israeli High Court. They are allowed to work in the military courts of Ofer and Salem, but travel restrictions still make their work difficult because they cannot enter Israel to visit their clients in prisons and



LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

interrogation centers.

Within the West Bank, the travel restrictions that make movement difficult for all Palestinians pose special obstacles for lawyers. Although in theory Palestinians with Gaza residency can represent clients in the military courts, in practice it is not possible for them to do so because they must apply to the Israeli authorities for permission to travel to the military courts. Given the current travel restrictions for Palestinians in Gaza, permission is almost certain to be denied.

Lawyers with Jerusalem IDs may take the same test administered by the Israeli Bar Association for foreign-trained lawyers in order to be licensed to represent clients in the Israeli civil courts.

In addition to working in the Israeli civil courts, lawyers with Israeli citizenship can also represent clients in the military courts. Lawyers with Israeli citizenship cannot, however, enter Gaza or regions classified "Area A" in the West Bank. These regions include most cities, so Israeli citizens cannot enter much of the West Bank to interview clients, their families and witnesses.

## After detention

In contravention of Article 27 of the Fourth Geneva Convention, which prohibits the transfer of prisoners from occupied territories, the Israeli military moves Palestinian prisoners from the West Bank to facilities inside Israel. Detention centers are located inside the West Bank, either on military bases or on settlements. Prisoners are interrogated at centers inside Israel. The ISA runs the four official interrogation centers.The Israeli High Court also confirmed in 2002 that there is a secret detention and interrogation facility in an unknown location. It is known only by its military code name "Facility 1391". All Israeli prisons are located inside Israel.

After the initial period of detainment, detainees from the West Bank are usually moved inside Israel to interrogation centers, where lawyers with West Bank residency are effectively barred from visiting them. These detainees can be held without judicial order for eight days; detentions can be extended for up to 188 days. Detainees may be barred access to a lawyer for up to 90 days. It is the norm for prisoners to be denied access to telephones throughout their interrogation and subsequent detention.

After being interrogated, a detainee can either be released, formally charged, or placed under administrative detention. If he is charged, the detainee is transferred to an Israeli prison to await trial (it is rare for Palestinian prisoners to be released on bail). If he is placed under administrative detention, he is transferred to an Israeli prison for up to six months but can be held indefinitely, as there is no limit to the number of times a detention order may be renewed.

Lawyers wishing to visit their clients face a myriad of obstacles. The restrictions on locating prisoners, getting permission to enter prisons, and conducting confidential client interviews in prison

**"I am surprised that anyone can work as a lawyer for administrative detainees without dying of stroke", Khaled al-Araj.**

are so onerous that most lawyers said that they have given up on prison visits and simply interview their clients at court in the five or ten minutes before the hearing begins.

Scheduling is a perennial problem for lawyers in the military courts. Lawyers must report to Salem or Ofer by 9:30 a.m., but there is no set schedule for hearings. As a result, lawyers frequently are forced to spend an entire day waiting for their clients' sessions. A fifteen-minute hearing can cost a lawyer an entire day of waiting. Lawyers reported occasionally being kept waiting until 7 p.m. for their sessions to begin.

## Entering the court

Lawyers with West Bank residency are not allowed to drive to the military courts. When lawyers arrive at the facility, they have to wait for soldiers to unlock the gates for them. Depending on the soldiers for access to the court can result in serious problems for some lawyers.

While all lawyers have to overcome significant logistical obstacles in order to represent their clients, lawyers with Gaza residency are even more restricted in their access to courts and prisons. The situation has changed significantly since the Israeli forces withdrew from the Gaza Strip in August 2005.

The military court of Erez was closed down when Israeli troops withdrew from Gaza. Lawyers from Gaza are now prevented from appearing in any military court or entering any Israeli prison.

Palestinians arrested in Gaza are usually held in Askalan/Shikma (the Hebrew and Arab place names) prison and tried or given detention hearings at the B'ir Sab'a/Beersheba courthouse (both facilities are inside Israel). If Palestinian detainees wish to be represented in court, they must hire a lawyer with Israeli citizenship. Lawyers from Gaza are reduced to playing the role of messengers between the families of prisoners and lawyers inside Israel. Because Palestinians cannot leave Gaza and people with Israeli citizenship cannot enter, it is common for lawyers who work together across the border to know each other only through telephone conversations.

Private lawyers tend not to be interested in working in this limited capacity, so since withdrawal the only lawyers who are involved with prisoners in the military courts are those who work with nongovernmental organizations.

## Language Difficulties

Language is a fundamental problem in the military courts. All proceedings in both Israeli civil courts and the military courts are conducted in Hebrew. While this does not pose a problem for Jewish Israelis or for Palestinians with Israeli citizenship (who tend to be bilingual), it can be a serious obstacle for lawyers from the West Bank. West Bank lawyers reported that their Hebrew was good enough to handle most of the court proceedings without a translator, but many of them had to pick up Hebrew on the job.

In the military courts, a soldier translates the proceedings into Arabic. Lawyers differed in the degree to which they trusted the official court translators, but they generally agreed that the quality of the translation is uneven.

According to Israeli law, a prisoner must be interrogated in his native language and his statement is to be written in that language. In practice, however, the prisoner's confession or statement is



LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

**"I'm against the military courts. Let the occupiers do this job for themselves. Why should lawyers go there and try to do things when we know at the beginning what the output is?", Sahar Francis**

frequently written in Hebrew by a policeman, and the prisoner signs a statement he cannot understand.

## Charges

The military orders governing the West Bank criminalize political activities that form the basis of civil society. Putting up political posters, writing political slogans on a wall, belonging to any political party or certain organizations listed in military orders, displaying a Palestinian flag or other political symbol, and attending a demonstration are all prosecuted as crimes that endanger the security of Israel.

The offense of "threatening the security of the state" is an umbrella charge that can include socializing with an individual who has been classified as a security threat.

Lawyers representing administrative detainees must contend with impossibly vague charges. Administrative detainees are usually charged with something as broad as "being a threat to the security of the area", but the area and the nature of the threat are left undefined.

When a prisoner is held in administrative detention, the court can order that the evidence against him be kept confidential. This procedure is used widely, forcing the lawyer to argue that her client is not a threat without knowing why he was detained in the first place.

In the majority of military tribunals, the evidence consists only of statements made by the defendant or other prisoners. If a defendant alleges that he was tortured when giving the statement, he can challenge its validity in a hearing known as a "trial within a trial". In practice, it is highly unusual for a military judge to dismiss evidence on these grounds. Lawyers who do persist in making these claims concede that they do so with little hope that their efforts will achieve anything.

## Witnesses

The military prosecutor is usually the only source of information about the evidence in administrative detention cases, but the defense lawyer cannot cross-examine the prosecutor as a witness.

It is rare for the defense to bring its own witnesses in administrative detention hearings, in part because witnesses can only testify as to the defendant's family life and moral character, since the charges against him are unknown. Lawyers reported that the court is unlikely to find this type of testimony convincing. If defense lawyers wish to bring witnesses in regular military tribunals, they must first apply for travel permits from the military in order for the witnesses to have permission to enter the court.

## Records of Decisions

While military orders must at least be published in civil administration offices, the military court is not required to publish the decisions of trial judges. Until recently, the court provided its rulings to four defense attorneys, who in turn made the rulings available to other lawyers. The military now publishes some decisions in a book and on CD-ROM, but this compilation is not comprehensive and is not distributed widely. Like all other written material produced by the courts, the military's compilation of orders and decisions is available only in Hebrew, even though Arabic is an official language in Israel.

## Plea Bargains

Ninety-eight percent of the cases in the military courts in 2005 were settled with plea bargains. Although lawyers said they were strongly opposed ideologically to the notion of settling for plea bargains rather than insisting on a full trial, they conceded that there are some cases in the military courts in which a plea bargain is unavoidable. If the defendant has confessed, for example, and the prosecution has constructed a series of statements from other prisoners supporting the defendant's confession, then a plea bargain may be his best option.

Unlike the Israeli civil courts, in which a trial must be completed within nine months, the military court may take two years to complete a trial. Prisoners who maintain their innocence may still choose to accept plea bargains because they have no faith in the military court to weigh the evidence against them fairly. In addition, prisoners may accept plea bargains because appearing for multiple hearings can be a difficult physical ordeal. Because prisoners may have to submit to repeated strip searches and wait for long periods of time, it can take twenty hours to be transported from the prison to the courthouse.

Some lawyers reported that they agree to plea bargains in certain cases because they are afraid that if they insist on a full trial, the judge will retaliate by imposing a higher sentence on their client.

## Appeals

When lawyers appeal the decisions of military judges at Ofer and Salem, the

**Subscription Information**

Subscription information can be found at www.counterpunch.org or call toll-free inside the U.S. 1-800-840-3683

**Published twice monthly except July and August, 22 issues a year.**

1- year hardcopy edition $45
2- year hardcopy edition $80
1- year email edition $35
2- year email edition $60
1- year email & hardcopy edition $50
1- year institutions/supporters $100
1- year student/low income, $35

Renew by telephone, mail or on our website. For mailed orders please include name, address and email address (if applicable) with payment. To renew by phone 1-800-840-3683 or 1-707-629 3683. Add $17.50 per year for subscriptions mailed outside the U.S.A.

**Make checks or money orders payable to:**
CounterPunch
Business Office
PO Box 228, Petrolia, CA 95558



LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

standard of review requires them to prove a mistake of law in the original ruling or to demonstrate that the military court's sentence was unreasonable. In practice, this is a difficult standard for defense attorneys to meet. There is no right of appeal from decisions of the military court of appeals. The decisions of the military appeals court can, in rare cases, be appealed to the Israeli High Court.

The Israeli High Court has ruled that it has the discretion in its capacity as the High Court of Justice to consider cases involving the extension of administrative detention orders and orders barring access to lawyers. In these appeals, the lawyer asks a panel of High Court judges to review the secret material against the detainee and to assess the lower court's assertion that he constitutes a security risk. The High Court judges weigh the secret evidence in a closed session with the prosecutor.

The High Court has ruled that a prisoner may be barred access to a lawyer if this measure is "absolutely necessary" for the good of the investigation or to protect security. Because the success rate of appeals to the Military Court of Appeals and security cases brought to the High Court is so low, lawyers are reluctant to encourage clients to appeal their cases.

## Boycott?

Some lawyers we interviewed argue that a general boycott of the military courts would be better in the long term for Palestinian prisoners. At the same time, they felt that if a boycott is to be effective, it must be organized by the prisoners. There is currently no movement to organize a boycott. Rather, prisoners ask lawyers to provide them with legal representation, so lawyers feel obligated to do what they can to help. Lawyers find themselves in the unenviable situation of doing the best they can for individual clients, even though they feel that by doing so, they give legitimacy to a system they know is unjust. CP

**"They deal with almost every Palestinian as a ticking bomb case."**

This report, completed in January, 2007, is based on interviews with fourteen lawyers who represent Palestinians (five Palestinians with West Bank residency, one Palestinian with Gaza residency, five Israelis, and three Palestinians with Israeli citizenship). The lawyers are all defense attorneys. Some are in private practice and some work with Israeli, Palestinian or international NGOs. The interviews were conducted from May-July 2006 in the West Bank and Israel. This report also includes information from an interview on Ofer military base with Col. Shaul Gordon, president of the military court of appeals.

**Nancy Glass and Reem Salahi** are studying law at Stanford and Boalt, respectively. This account is based on a report they wrote during a summer 2006 internship with Addameer, a legal services organization in Ramallah. For a copy of the full report, contact Nancy at nglass@stanford.edu.

**CounterPunch**
PO Box 228
Petrolia, CA 95558

**Thank You to those CounterPunchers who have responded to our annual fundraiser. It's true: We need your support!**

1st Class
Presort
U.S. Postage
PAID
Permit No. 269
Skokie, IL

**First Class**



LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED